

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

BRIAN J. STRETCH (CSBN 163973)
Chief, Criminal Division

SUSAN B. GRAY (CSBN 100374)
Assistant United States Attorney

450 Golden Gate Ave., Box 36055
San Francisco, CA 94102
Telephone: (415) 436-7324
Facsimile: (415) 436-7234
Email: susan.b.gray@usdoj.gov

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA)

No. CV 08-0826 MMC

Plaintiff,)

**JOINT CASE MANAGEMENT
STATEMENT
and
[PROPOSED] ORDER
CONTINUING CONFERENCE**

v.)

APPROXIMATELY \$61,386.00 IN
UNITED STATES CURRENCY,)

Defendant.)

CMC Date: ~~February 26, 2010~~
Time: 10:30 a.m.
Courtroom 7, 19th Floor

TOAN HOANG, QUE NGO, JULIE LUU,)

Claimants.)

Plaintiff, United States of America, and Claimants, Toan Hoang, Que Ngo and Julie Luu,
respectfully submit this Joint Case Management Statement.

1. Jurisdiction and Service

This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and 1355 and Title 21, United States Code, Section 881(a)(6). There are no counterclaims. Plaintiff contends that it has served notice of this action on all persons who may have an interest in the

1 property. Toan Hang, Que Ngo and Julie Luu, (“claimants”), represented by Erik Babcock, have
2 filed verified claims and an answer. To date, no other claims have been filed in this action.

3 **2. Facts**

4 On March 22, 2007, Special Agent Rick Zemlok of the Southern Alameda County
5 Narcotics Enforcement Team (hereinafter “SACNET”) received information from a citizen
6 informant about a possible indoor marijuana grow located at 3451 Isherwood Place (“Isherwood
7 Place”) in Fremont, California. The citizen noted the odd behavior of the residents and related
8 that during a conversation with a PG&E employee who was out checking meters, the PG&E
9 employee had noticed how fast the meter was spinning on this house.

10 The citizen informant provided Special Agent Zemlok with three different license plate
11 numbers which had been seen at this address. Special Agent Zemlok checked law enforcement
12 data bases and discovered the following: California Licence Number 4HTA936 was traced to a
13 silver colored BMW which is registered to a Jim or Ngau Tran on Sundance Drive in Fremont,
14 California.

15 The second license plate, 5JKB651, was traced to a silver colored Nissan registered to a
16 Patricia Salas Bevilacqua (“Bevilacqua”) on Highway 20, P0 Box 1437 Willits, California. A
17 DMV check on Bevilacqua’s license status showed an address on Glithero Court in San Jose,
18 California as of February 27, 2007 and another address of P0 Box 1437 Willits, California as of
19 January 19, 2007. Bevilacqua does not appear to have any criminal history.

20 The third license plate, 5XYG362, was traced to a Toyota SUV, registered to Enterprise
21 Rent-a-Car in San Leandro, California. This vehicle was rented by Kwang Pak (“Pak”) from
22 Lexus of Stevens Creek on March 26, 2007 and returned on March 27, 2007.

23 According to DMV records, Pak’s home address was 2452 Cameron Drive in Union City,
24 California, as of May 15, 2006. Pak was cited on July 11, 2006, in a vehicle with California
25 Licence #6L39611, registered to a A Vien Ngoc, DBA Just Futon SF, Toan Hang, on Geary
26 Boulevard in San Francisco. Toan Hang was subsequently identified as Pak’s brother.

27 During the latter part of March and early April 2007, Special Agent Zemlok, and other law
28 enforcement officers conducted surveillance on Isherwood Place. During the course of their

1 surveillance they noted the frequent presence of Tran, Pak and Bevilacqua. During the course of
2 the surveillance Officer Zemlock followed Bevilacqua to another residence located at 38079
3 Guava Drive, Newark, California ("Guava Drive") and a residence located at 2452 Cameron
4 Drive in Union City, California ("Cameron Drive").

5 On April 4, 2007, Special Agent Zemlok noticed the distinct sound of fans coming from the
6 vents on the bottom of the houses at Isherwood Place and Guava Drive. Based upon his training
7 and experience Special Agent Zemlok knew that those operating an indoor marijuana grow will
8 routinely use a sophisticated filtering system to mask the odor of marijuana. Such a system must
9 eventually be ventilated outside, and a common way to do this is to run the ducting down under
10 the house.

11 On April 5, 2007, at approximately Officer Snelson of the Fremont Police Department
12 brought his narcotic detection canine to the Isherwood house and Guava houses. The dog gave a
13 positive indication for controlled substances at both houses.

14 On April 5, 2007, Special Agent Zemlok obtained a duly authorized state search warrant for
15 the PG&E subscriber and account information for both Isherwood Place and Guava Drive. On
16 April 6, 2007 he served this warrant with PG&E and learned the following:

17 The listed subscriber for PG&E at Isherwood Place in Fremont, California, was Patrica Salas
18 with social security number of xxx-xx-9189. The last four digits of this social security number
19 match the last four digits of Patricia Salas Bevilacqua's true social security number. There was
20 an outstanding bill of \$8,436.21. PG&E lists the customer set up date as October 2, 2006. Special
21 Agent Zemlok reviewed the records and discovered that the recorded kilowatt hours jumped by
22 almost 4,000 kilowatt hours within the first month of Bevilaqua's account. The kilowatt hours
23 continued to be in the thousands for the next five months until a state search warrant was served
24 on this address on April 17, 2007. Based on his training and experience, Special Agent Zemlok
25 knew that these usage levels at this type of residence are exceptionally high and common with
26 indoor marijuana cultivations, as marijuana plants require a great deal of lighting from high
27 wattage lights.

28 The listed subscriber for PG&E at Guava Drive in Newark, California is Kwang Pak with

1 social security number of xxx-xx-7765. The last four digits of this social security number match
2 the last four digits of Pak's true social security number. PG&E lists his cell phone number as
3 (408) 891-9009 and account ID number as xxxxxxxx3069. Service for Pak began on October 25,
4 2005.

5 From February 2006 until October 2006, the electrical usage at this address was
6 very high, in the thousands of kilowatt hours. From October of 2006 to April of 2007, the usage
7 levels dropped significantly. However, the lower usage levels at this address coincided with the
8 start of the high usage level at the Isherwood address.

9 A routine computer check on Guava Drive revealed that Toan Hang has a 2000 Nissan
10 registered to him at Guava Drive. Hang is the owner of Cameron Drive along with Julie Luu.

11 On April 16, 2007 SACNET agents executed duly authorized state search warrants for the
12 residences at Isherwood Place in Fremont and Guava Drive in Newark. In both residences they
13 discovered clandestine marijuana cultivation operations.

14 At Guava Drive in Newark, the agents discovered 5 separate indoor marijuana cultivation
15 rooms located with a total of 144 marijuana plants. All the rooms had tarps spread across the
16 floors, and there was blackout sheeting and reflectorized materials stapled to the walls. Each
17 marijuana plant was contained in a large black bucket with potting soil. A great deal of wiring
18 and breaker boxes were located throughout the house and were being used to power the large
19 1000 watt power ballasts that in turn powered the 1000 watt lights contained in suspended
20 reflectors. There were sophisticated venting systems and filters located through out the rooms
21 which appeared to be sucking air into the house from under the sub floor and filtering air out into
22 the attic. Officers also found a waste management bill for 38079 Guava Drive in the name of
23 Patricia Salas, a PG&E bill for 38079 Guava in the name of Kwang Pak, a rental agreement for
24 38079 Guava in the names of Kwang Pak, Kim Nguyen, Henry Luu, and Tony Trait and a large
25 zip lock type bag containing approximately 181.6 grams of marijuana buds.

26 On April 16, 2007, SACNET agents served the search warrant at Isherwood Place in
27 Fremont. There was a large and recently harvested indoor marijuana cultivation set up inside the
28 residence, which closely resembled the one at Guava Drive. There were four different grow

1 rooms set up with a total of 132 black plastic pots all containing freshly cut stems with root balls
2 from marijuana plants. The agents also discovered one large bag containing marijuana clippings.
3 Located throughout the rest of the house were several bags of soil, bottles of grow nutrients,
4 hoses, clippers and associated cultivation supplies. Located in the front room and kitchen area
5 were numerous articles of women's clothing in addition to photographs and indicia for
6 Bevilacqua.

7 Bevilacqua, Tran and Pak were all arrested that day and provided statements. Bevilacqua said
8 she had been asked to put the rental agreement for the Isherwood address under her name in
9 addition to the PG&E bill. She was also asked to put the garbage bill for the Guava address in her
10 name. She routinely pays for these bills; however, someone else puts money for the bills into her
11 account. She refused to provide the names of anyone who had asked her to do these activities, but
12 she admitted that she had received payment in the past for assisting in the grow operations. She
13 received a \$1,000 payment after the last cultivation was harvested sometime around January of
14 2007. She said that there have been two harvest cycles that had been completed at the Isherwood
15 address, the last about one to two weeks before her arrest. Her boyfriend is Kwang Pak and she
16 routinely lives at his house on Cameron Drive in Union City.

17 Tran told Special Agent Zemlock that he gets paid to help take care of the marijuana
18 cultivations at both the Guava and Isherwood addresses. Tran said that he does not sell marijuana
19 himself, but he assists in the cultivation. Tran said that he was paid \$3,000 for his services after
20 the last marijuana crop was harvested. Tran said that he is not currently employed and that the
21 Lexus he had been driving was his and that he had just traded his silver BMW to his friend for it.

22 Pak said that the Guava address is in his name and has been for about one and one half years.
23 Pak said he was fully aware of the marijuana cultivation located inside and said that it was his.
24 Pak said that there were approximately 15 marijuana plants inside the house. Pak said that Jim
25 Tran helps him care for the marijuana plants and that he paid Tran \$2,000 for his services after the
26 last grow cycle. Pak also said that he paid Bevilacqua \$1,000 for her services after the last grow
27 cycle.

28 Upon the conclusion of the interviews, SACNET agents served a search warrant on Cameron

1 Drive in Union City. During the service of this search warrant the defendant \$61,386 in United
2 States Currency was located and seized. Most of the currency was found inside of the bedroom of
3 Pak's mother, Que Ngo. Ngo had a floor safe inside of her closet and she provided a key to
4 Special Agent Zemlok to open it. A total of \$48,460 was found inside of this safe. Another
5 \$1,400 was found inside of a black purse in the bedroom. \$125 was found in Ngo's closet, and
6 \$11,000 was found inside of a silver two drawer filing cabinet inside of Ngo's bedroom. \$401 was
7 found inside of Pak's bedroom. The currency was in the following denominations: \$48,460=390 x
8 \$100, 11 x \$50, 388 x \$20, 83 x \$10, 64 x \$5; \$1,400=14 x \$100; \$125= 25 x \$5; \$11,000=81 x
9 \$100, 143 x \$20, 4 x \$10; \$401=2 x \$100, 1 x \$50, 6 x \$20, 3 x \$10, 1 x \$1.

10 Also located inside this bedroom was a rental agreement in the name of Kwang Pak and
11 Patricia Bevilacqua for 34395 Dobson Way in Fremont, California. This rental agreement was
12 dated September 27, 2006. When questioned about this residence, Pak admitted that there was
13 another marijuana cultivation operation located at this residence. Pak stated that he put the rental
14 agreement in his name as a favor to someone. Agents also found miscellaneous paperwork, indicia
15 and photos for Kwang Pak in this bedroom.

16 On April 19, 2007, SACNET agents served a duly authorized state search warrant for 34395
17 Dobson Way, Fremont, California. They discovered another large indoor marijuana cultivation
18 which closely resembled the cultivation operations at both Guava Drive and Isherwood Place.
19 There were 215 marijuana plants located inside this residence.

20 Following the arrest of Bevilacqua, Pak, and Tran, Special Agent Zemlok placed them inside
21 a SACNET vehicle by themselves and let a digital recorder record their conversation. During this
22 conversation, Pak told Bevilacqua to say that she does not know anything. Then Patricia made a
23 statement to Pak that her name needs "to get the f--k off of Ms. Lee's house". She then said "you
24 forgot about that one". Bevilacqua's checkbook, found inside her vehicle, had several carbon
25 copy receipts of recent checks, one of which was made out to Ms. Lee for "rent" in the amount of
26 \$1,850 dated March 1, 2007. Lillian W. Lee is listed on a rental agreement for Dobson Way
27 which was found during the search at the Cameron house. During the conversation, Pak
28 repeatedly directs Tran and Bevilacqua to tell the officers that they do not know anyone or anything

1 and he says that his brother will say he knows nothing. Pak repeatedly asks if the officers can
2 search beyond his room. He told Tran that he gave his money to his "old lady to hold". When
3 Bevilacqua mentions the papers and chemicals in Pak's room, Pak replied, "Of course, cuz I had
4 to pay for everything." Bevilacqua also told both Pak and Tran that the weed they gave to
5 "Charles" was "horrible", there were seeds in it and it was not completely dry.

6 In May 2007, members of SACNET contacted the California Employment Development
7 Department and requested any known work history for Pak, Hang, Ngo and Bevilacqua for the
8 first work quarter of 2005 to June of 2007. They learned there were no reported wages for any of
9 these individuals, except Pak, who showed wages for only the first quarter of 2006.

10 On February 6, 2008, the United States filed a complaint seeking forfeiture of the defendant
11 funds seized from Pak's residence in Union City. Claimants are Pak's mother, brother and sister-
12 in-law who also reside at 2452 Cameron Drive, Union City, California.

13 **3. Principal Factual and Legal Issues**

14 The principal factual and legal issues in dispute are:

15 1) whether plaintiff can establish by a preponderance of the evidence that the defendant
16 currency is drug proceeds and thus forfeitable under Title 21, United States Code, Section
17 881(a)(6) and,

18 2) whether any of the claimants can establish that they are innocent owners of the
19 defendant funds.

20 **5. Anticipated Motions**

21 All parties may move for summary judgment at the close of discovery.

22 **6. Relief/Damages**

23 Plaintiff seeks a judgment of forfeiture of the defendant currency. This is not a damages
24 case. Claimants seek the return of the defendant currency.

25 **7. Settlement**

26 At this point, settlement does not appear likely.

27 **8. Discovery**

28 At the March 20, 2009, case management conference the United States served claimant's

1 counsel with Special Interrogatories for each of the claimants, pursuant to Rule G(6) of the
2 Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. The Special
3 Interrogatories were an effort by the United States to determine each claimants' standing to pursue
4 their claim to the defendant funds. Pursuant to Supplemental Rule G(6)(a) responses to the
5 Interrogatories were due 20 days later, on April 20, 2009. On April 27, 2009, the United States
6 received selected records from claimants, but no response to the Special Interrogatories. While the
7 records may be somewhat responsive to certain issues raised in the Special Interrogatories, they do
8 not answer all of them. In addition, the bank records provided for Ngo had six gaps in the records
9 produced. Other documentation provided by Ngo was undated; as was a declaration provided by
10 Hang regarding the sale of his car. On June 5, 2009, the claimants served responses to the Special
11 Interrogatories on the United States. Again, many of the responses lacked specificity, i.e. claimant
12 Hang claims \$20,000 of the funds as proceeds as the sale of an automobile, however, he has yet to
13 provide the date of sale, supply the bill of sale or transfer of title documentation.

14 Given the nature of claimant's response, the United States has propounded additional
15 discovery to all claimants in the form of requests for production of documents and interrogatories.
16 In addition, the United States is conducting additional discovery into Toan Hang's possible
17 involvement in the rental of any additional houses for marijuana cultivation.

18 **9. Alternative Means of Disposition**

19 Plaintiff does not request reference to arbitration.

20 **10. Pretrial/Trial Issues**

21 The parties have not yet discussed any trial issues.

22 **11. Class Action**

23 This is not a class action.

24 **12. Related Case**

25 There are no related cases.

26 **13. Other Matters –**

27 As noted above, the United States has propounded additional discovery to all three
28 claimants. The discovery responses are due February 10, 2010. However, counsel for claimants

1 asked has for an extension of time until March 1, 2010, to accommodate his travel schedule. The
2 United States does not object to the extension. However, the United States had planned on being
3 able to review the discovery responses prior to the case management conference in order to be
4 able to more accurately inform the court of its future plans for discovery or motions. Given that
5 the discovery is now due after the current case management conference date of February 26, 2010,
6 the parties now request that the conference be continued for approximately 30 days, to March 26,
7 2010. This will allow the United States time to review the discovery prior to the case
8 management conference and will also accommodate Mr. Babcock's schedule.

10 Respectfully submitted,

11 JOSEPH P. RUSSONIELLO
12 United States Attorney

13 Dated: February 9, 2010

14 /S/
15 SUSAN B. GRAY
16 Assistant United States Attorney

17 Dated: February 9, 2010

18 /S/
19 ERIK BABCOCK
20 Attorney for Claimants Toan Hoang, Que Ngo and
21 Julie Luu

22 ~~PROPOSED~~ ORDER

23 GOOD CAUSE APPEARING, THE CASE MANAGEMENT CONFERENCE
24 CURRENTLY SCHEDULED FOR FEBRUARY 26, 2010, IS CONTINUED TO April 2,
25 2010, AT 10:30 a.m. A Joint Case Management Statement shall be filed by March 26, 2010.

26 IT IS SO ORDERED.

27 Dated: February 17, 2010

28 
MAXINE M. CHESNEY
United States District Judge